

ZONING MAP ORDINANCE NO. Z-_____

AN ORDINANCE amending the City of
Fort Wayne Zoning Map No. S-14.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT
WAYNE, INDIANA:

SECTION 1. That the area described as follows is hereby
designated an B-1-A (Limited Business) District under the
terms of Chapter 33 of the Code of the City of Fort Wayne,
Indiana of 1974:

Part of the East half of the Southeast Quarter of Section
32, Township 31 North, Range 13 East, Allen County,
Indiana, more particularly described as follows:

Commencing at the Northeast corner of the East half of
the Southeast Quarter of Section 32, Township 31 North,
Range 13 East, Allen County, Indiana; thence West along
the North line of the East $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Sec. 32-31-
13, a distance of 290.5 feet; thence South with a
deflection angle to the left of 89 degr. 07 min. 20 sec.
a distance of 200 feet to the point of beginning; thence
West with a deflection angle to the right of 89 degr. 07
min. 20 sec. a distance of 166.5 feet; thence South with
a deflection angle to the left of 89 degr. 07 min. 20
sec. a distance of 254.8 feet; thence East with a
deflection angle to the left of 90 degr. 52 min. 40 sec.
a distance of 166.5 feet; thence North with a deflection
angle to the left of 89 degr. 07 min. 20 sec. a distance
of 254.98 feet to the point of beginning, containing 0.99
acres,

TOGETHER WITH a 30 foot wide non-exclusive ingress and
egress easement, more particularly described as follows:

Part of the East half of the Southeast Quarter of Section
32, Township 31 North, Range 13 East, Allen County,
Indiana, more particularly described as follows:

Commencing at the Northeast corner of the East half of
the Southeast Quarter of Section 32, Township 31 North,
Range 13 East, Allen County, Indiana; thence West along
the North line of the East $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Sec. 32-31-
13, a distance of 290.5 feet; thence South with a
deflection angle to the left of 89 degr. 07 min. 20 sec.,
a distance of 170.0 feet to the point of beginning;
thence West with a deflection angle to the right of 89
degr. 07 min. 20 sec., a distance of 166.5 feet; thence
South with a deflection angle to the left of 90 degr. 52
min. 40 sec., a distance of 166.5 feet; thence North with
a deflection angle to the left of 89 degr. 07 min. 20
sec., a distance of 30.0 feet to the point of beginning.

SUBJECT TO a 14 foot wide utility easement, more
particularly described as follows:

Part of the East half of the Southeast Quarter of Section
32, Township 31 North, Range 13 East, Allen County,
Indiana, more particularly described as follows:

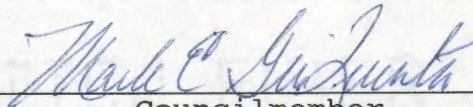
Commencing at the Northeast corner of the East half of
the Southeast Quarter of Section 32, Township 31 North,
Range 13 East, Allen County, Indiana; thence West along
the North line of the East $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Sec. 32-31-
13, a distance of 290.5 feet; thence South with a

#514

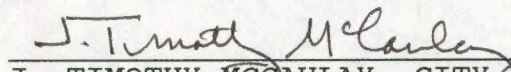
deflection angle to the left of 89 degr. 07 min. 20 sec.,
a distance of 200 feet to the point of beginning; thence
West with a deflection angle to the right of 89 degr. 07
min. 20 sec., a distance of 166.5 feet; thence South with
a deflection angle to the left of 89 degr. 07 min. 20
sec., a distance of 14.0 feet; thence East with a
deflection angle to the left of 90 degr. 52 min. 40 sec.,
a distance of 166.5 feet; thence North with a deflection
angle to the left of 89 degr. 07 min. 20 sec., a distance
of 14.0 feet to the point of beginning.

and the symbols of the City of Fort Wayne Zoning Map No. S-14,
as established by Section 11 of Chapter 33 of the Code of the
City of Fort Wayne, Indiana are hereby changed accordingly.

SECTION 2. That this Ordinance shall be in full force
and effect from and after its passage and approval by the
Mayor.


Councilmember

APPROVED AS TO FORM AND LEGALITY:


J. TIMOTHY MCCAULAY, CITY ATTORNEY

Read the first time in full and on motion by _____,
and duly adopted, read the second time by title and referred to the Committee on _____,
(and the City Plan Commission for recommendation)
and Public Hearing to be held after due legal notice, at the Common Council Conference
Room 128, City-County Building, Fort Wayne, Indiana, on _____,
the _____ day of _____, 19____, at _____
o'clock _____ M., E.S.T.

DATED: _____

SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by _____,
and duly adopted, placed on its passage. PASSED _____ LOST
by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	_____	_____	_____	_____
BENDER	_____	_____	_____	_____
CRAWFORD	_____	_____	_____	_____
EDMONDS	_____	_____	_____	_____
HALL	_____	_____	_____	_____
HAYHURST	_____	_____	_____	_____
HENRY	_____	_____	_____	_____
LUNSEY	_____	_____	_____	_____
RAVINE	_____	_____	_____	_____
SCHMIDT	_____	_____	_____	_____

DATED: _____

SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana,
as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL)
(ZONING) ORDINANCE RESOLUTION NO. _____
on the _____ day of _____, 19____

ATTEST:

SEAL

SANDRA E. KENNEDY, CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the
_____ day of _____, 19____,
at the hour of _____, o'clock _____, M., E.S.T.

SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this _____ day
of _____, 19____, at the hour of _____
o'clock _____ M., E.S.T.

PAUL HELMKE, MAYOR

Read the first time in full and on motion by Edmund,
and duly adopted, read the second time by title and referred to the
Committee on Regulation (and the City Plan Commission
for recommendation) and Public Hearing to be held after due legal notice, at
the Common Council Council Conference Room 128, City-County Building, Fort
Wayne,, Indiana, on _____, the _____ day of
_____, 19_____, at _____ o'clock
_____, M., E.S.T.

DATED: 7-14-92 Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by _____,
and duly adopted, placed on its passage. PASSED LOST
by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES				
BRADBURY				
EDMONDS				
GiaQUINTA				
HENRY				
LONG				
LUNSEY				
RAVINE				
SCHMIDT				
TALARICO				

DATED: _____
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)
(SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. _____
on the _____ day of _____, 19_____,
ATTEST: (SEAL)

SANDRA E. KENNEDY, CITY CLERK PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
the _____ day of _____, 19_____,
at the hour of _____ o'clock _____, M., E.S.T.

SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this _____ day of _____,
19_____, at the hour of _____ o'clock _____ M., E.S.T.

PAUL HELMKE, MAYOR

RECEIPT

66-4822

No 10915

COMMUNITY & ECONOMIC DEVELOPMENT

FT. WAYNE, IND., June 15 1992

RECEIVED FROM PAT. Bruggeman \$ 200.00
 THE SUM OF Two hundred and no/one hundred DOLLARS
 ON ACCOUNT OF Regina Pittman at 4704 E. State

PAID BY: CASH ☐ CHECK ☒ M.O. ☐

W.E. [Signature]
 AUTHORIZED SIGNATURE

PETITION FOR ZONING ORDINANCE AMENDMENT

RECEIPT NO. _____

THIS IS TO BE FILED IN DUPLICATE

DATE FILED _____

INTENDED USE BEAUTY SALON AND
Future Building Sites

I/We Janice M. Garman, Eric W. Garman and
(Applicant's Name or Names) Patrick J. Bruggeman

do hereby petition your Honorable Body to amend the Zoning Map of Fort Wayne Indiana, by reclassifying from a/an POD District to a/an BIA District the property described as follows:

.99 Acre parcel located at 4704
EAST STATE BLVD. PART OF E 1/2 of the
SE 1/4 of Sec. 32, TWP 31N, RANGE 13 E

(Legal Description) If additional space is needed, use reverse side.

ADDRESS OF PROPERTY IS TO BE INCLUDED: 4704 East State Blvd.

(General Description for Planning Staff Use Only)

I/We, the undersigned, certify that I am/We are the owner(s) of fifty-one percentum (51%) or more of the property described in this petition.

<u>PATRICK J. BRUGGEMAN</u>	<u>P.O. BOX 11529</u>	<u>Patrick J. Bruggeman</u>
_____	<u>FORT WAYNE IN</u>	_____
_____	<u>46859</u>	_____
(Name)	(Address)	(Signature)

(If additional space is needed, use reverse side.)

Legal Description checked by _____
(OFFICE USE ONLY)

NOTE FOLLOWING RULES

All requests for deferrals, continuances, withdrawals, or request that the ordinance be taken under advisement shall be filed in writing and be submitted to the City Plan Commission prior to the legal notice pertaining to the ordinance being sent to the newspaper for legal publication. If the request for deferral, continuance or request that ordinances be taken under advisement is received prior to the publication of the legal ad being published the head of the Plan Commission staff shall not put the matter on the agenda for the meeting at which it was to be considered. The Plan Commission staff will not accept request from petitioners for deferrals, continuances, withdrawals, or requests that an ordinance be taken under advisement, after the legal notice of said ordinance is forwarded to the newspaper for legal publication but shall schedule the matter for hearing before the City Plan Commission. (FILING FEE \$100.00)

Name and address of the preparer, attorney or agent.

<u>Janice M. Garman</u>	<u>9622 N. Courtland Rd.</u>	<u>627-3952</u>
(Name)	(Address & Zip Code)	(Telephone Number)
	<u>Fort Wayne IN 46706</u>	

COMMUNITY DEVELOPMENT AND PLANNING / Division of Long Range Planning & Zoning and (CITY PLAN COMMISSION) / Room #830, City-County Building, One Main Street Fort Wayne, IN 46802 (PHONE: 219/427-1140).

Applicants, Property owners and preparer shall be notified of the Public Hearing approximately ten (10) days prior to the meeting.

Legal Description of property to be rezoned.

.99 acre parcel located at 4704
East State Blvd.
Part of E 1/2 of the SE 1/4 Sec. 32,
T12S R 31N, Range 13E

Owners of Property

Patrick J. Braggeman	P.O. Box 11529	Patrick Braggeman
	Fort Wayne IN	
	46859	
(Name)	(Address)	(Signature)

NOTE: All checks are to be made payable to: CITY OF FORT WAYNE
This form is to be filed in duplicate.

NOTICE:

FILING OF THIS APPLICATION GRANTS THE CITY OF FORT WAYNE PERMISSION TO POST
"OFFICIAL NOTICE" ON THE PETITIONED PROPERTY.

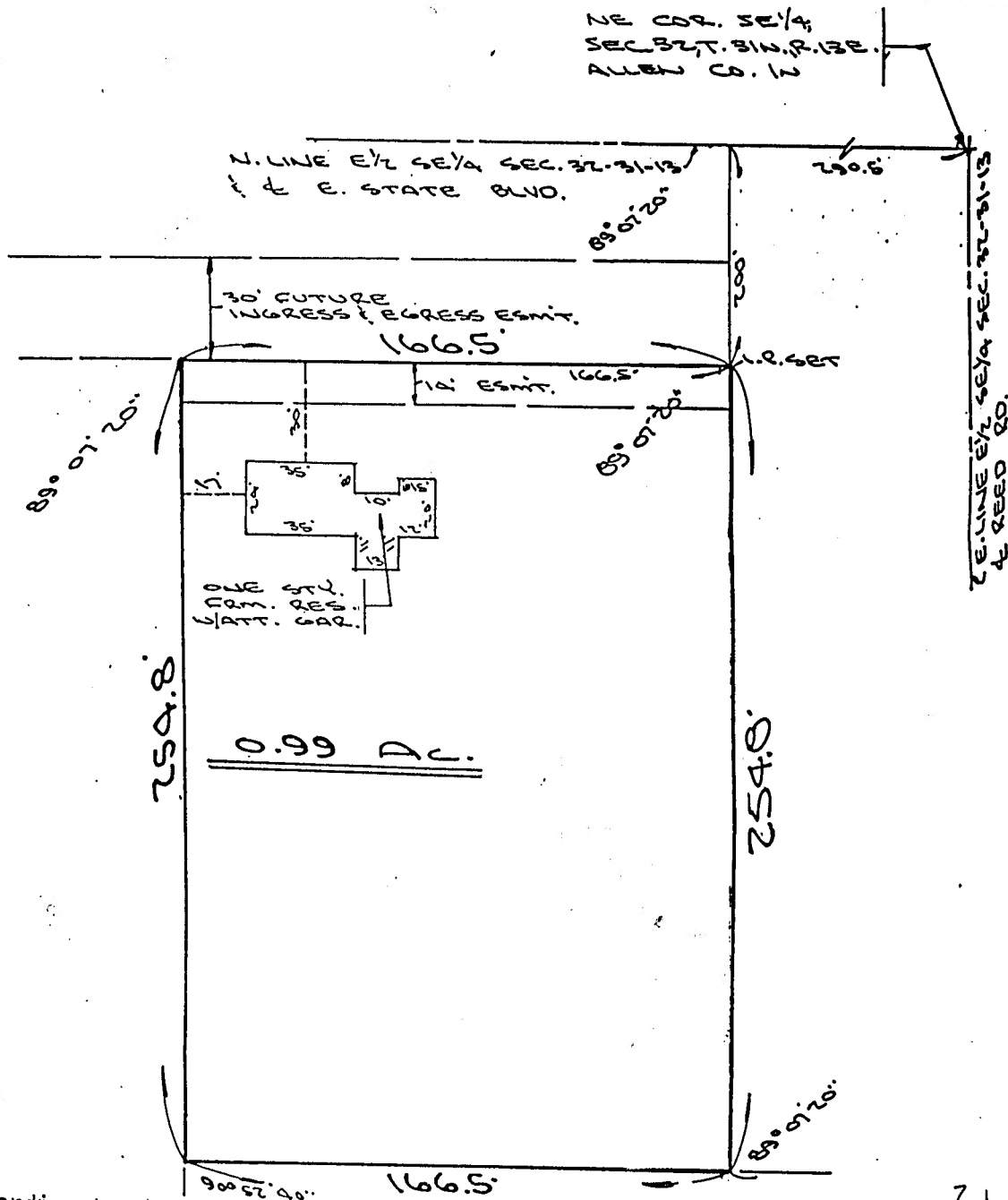
FAILURE TO POST, OR TO MAINTAIN POSTING CAN PREVENT THE PUBLIC HEARING
FROM BEING HELD.

OFFICE OF:

JOHN R. DONOVAN P.E. No. 9173 P.L.S. No. 9921 INDIANA
FRANCIS X. MUELLER P.L.S. No. S0193 INDIANA
GREGORY L. ROBERTS P.L.S. No. S0548 INDIANA
FORT WAYNE, INDIANA

Measurements were made and corners perpetuated as shown hereon, in accordance with the true and established lines of the property described, and in conformity with the records in the office of the County Recorder, Allen County, Indiana. No encroachments existed, except as noted below.

The description of the real estate is as follows, to wit: **SEE ATTACHED SHEET 1**



NOTE: According to the Flood Insurance Rate Map (FIRM), number 180003 0005B, dated April 3, 1985, the herein described real estate is located in Zone "C", and is not in a flood hazard area.

JOB FOR: BRUGGEMAN

1" x 50"
4-6-88
DEC 1 4 12 PM

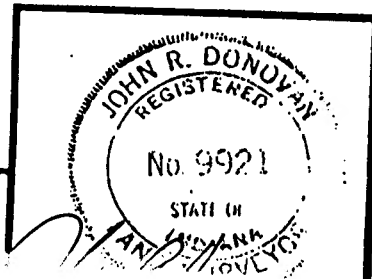


EXHIBIT "A"

Part of the East half of the Southeast Quarter of Section 32, Township 31 North, Range 13 East, Allen County, Indiana, more particularly described as follows:

Commencing at the Northeast corner of the East half of the Southeast Quarter of Section 32, Township 31 North, Range 13 East, Allen County, Indiana; thence West along the North line of the East $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Sec. 32-31-13, a distance of 290.5 feet; thence South with a deflection angle to the left of 89 degr. 07 min. 20 sec. a distance of 200 feet to the point of beginning; thence West with a deflection angle to the right of 89 degr. 07 min. 20 sec. a distance of 166.5 feet; thence South with a deflection angle to the left of 89 degr. 07 min. 20 sec. a distance of 254.8 feet; thence East with a deflection angle to the left of 90 degr. 52 min. 40 sec. a distance of 166.5 feet; thence North with a deflection angle to the left of 89 degr. 07 min. 20 sec. a distance of 254.8 feet to the point of beginning, containing 0.99 acres,

TOGETHER WITH a 30 foot wide non-exclusive ingress and egress easement, more particularly described as follows:

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SUBJECT TO a 14 foot wide utility easement, More particularly described as follows:

Part of the East half of the Southeast Quarter of Section 32, Township 31 North, Range 13 East, Allen County, Indiana, more particularly described as follows:

Commencing at the Northeast corner of the East half of the Southeast Quarter of Section 32, Township 31 North, Range 13 East, Allen County, Indiana; thence West along the North line of the East $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Sec. 32-31-13, a distance of 290.5 feet; thence South with a deflection angle to the left of 89 degr. 07 min. 20 sec., a distance of 200 feet to the point of beginning; thence West with a deflection angle to the right of 89 degr. 07 min. 20 sec., a distance of 166.5 feet; thence South with a deflection angle to the left of 89 degr. 07 min. 20 sec., a distance of 14.0 feet; thence East with a deflection angle to the left of 90 degr. 52 min. 40 sec., a distance of 166.5 feet; thence North with a deflection angle to the left of 89 degr. 07 min. 20 sec., a distance of 14.0 feet to the point of beginning.

RESOLUTION OF ZONING ORDINANCE AMENDMENT RECOMMENDATION

WHEREAS, the Common Council of the City of Fort Wayne, Indiana on July 14, 1992 referred a proposed zoning map amendment to the City Plan Commission which proposed ordinance was designated as Bill No. Z-92-07-03; and,

WHEREAS, the required notice of public hearing on such proposed ordinance has been published as required by law; and,

WHEREAS, the City Plan Commission conducted a public hearing on such proposed ordinance on July 20, 1992.

NOW THEREFORE, BE IT RESOLVED that the City Plan Commission does hereby recommend that this ordinance be returned to the Common Council with a DO NOT PASS recommendation based on the following "Findings of Fact".

(1) the grant will be injurious to the public health, safety, morals and general welfare of the community;

(2) the use or value of the area adjacent to the property included in the rezoning will be affected in a substantially adverse manner;

(3) the need for the rezoning does not arise from conditions peculiar to the property involved and the condition is not due to the general conditions of the neighborhood;

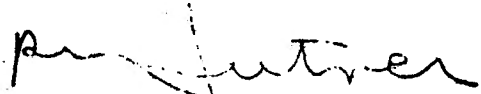
(4) the strict application of the terms of the zoning ordinance will not constitute an unusual an unnecessary hardship to this property;

(5) the grant interferes substantially with the comprehensive plan adopted under the 500 series of the metropolitan development law; and,

BE IT FURTHER RESOLVED that the Secretary is hereby directed to present a copy of this resolution to the Common Council at its next regular meeting.

This is to certify that the above is a true and exact copy of a resolution adopted at the meeting of the Fort Wayne City Plan Commission held August 24, 1992.

Certified and signed this
25th day of August 1992.

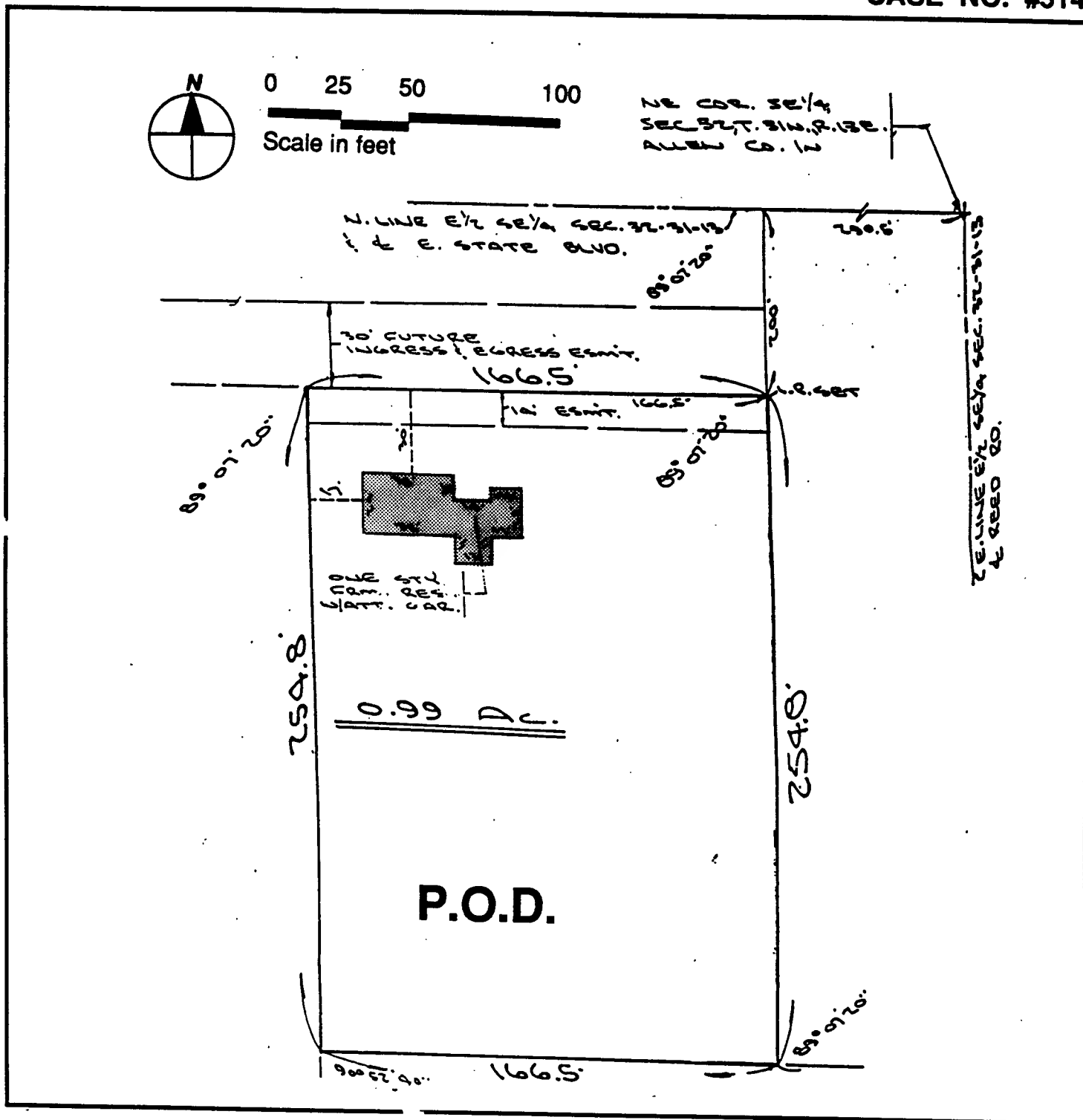


Robert Hutner
Secretary

REZONING PETITION

AREA MAP

CASE NO. #514



COUNCILMANIC DISTRICT NO. 2

Map No. S-14

LW 6-22-92

R1	One-Family	B1	Limited Business	M1	Light Industrial
R2	Two-Family	B2	Planned Shopping Center	M2	General Industrial
R3	Multi-Family	B3	General Business	M3	Heavy Industrial
RA/RB	Residential	B4	Roadside Business	MHP	Mobile Home Park
PUD	Planned Unit Dev.	POD	Professional Office District		

FACT SHEET

Z-92-07-03

BILL NUMBER

**Division of Community
Development & Planning****BRIEF TITLE**

Zoning Map Amendment

APPROVAL DEADLINE**REASON**

From POD to B1A

DETAILS**POSITIONS****RECOMMENDATIONS****Specific Location and/or Address**

4704 E State B1

Reason for Project

Beauty Salon

Discussion (Including relationship to other Council actions)20 July 1992 - Public Hearing

See Attached Minutes of Meeting

24 August 1992 - Business Meeting

Motion was made and seconded to return the ordinance to the Commoun Council with a DO NOT PASS recommendation.

Of the six (6) members present, five (5) voted in favor of the motion, one (1) voted against the motion.

Motion carried.

Sponsor

City Plan Commission

Area Affected

City Wide

Other Areas

**Applicants/
Proponents****Applicant(s)**
Janice Garman/Eric Garman/
Patrick Bruggeman
City Department

Other

Opponents

Groups or Individuals

Basis of Opposition

**Staff
Recommendation**☐ For ☒ Against**Reason Against**

- Approval is contrary to the purpose of the existing zoning classification.

**Board or
Commission
Recommendation****By**☐ For ☒ Against
☐ No Action Taken☐ For with revisions to conditions
(See Details column for conditions)**CITY COUNCIL
ACTIONS
(For Council
use only)**☐ Pass ☐ Other
☐ Pass (as amended) ☐ Hold
☐ Council Sub. ☐ Do not pass

DETAILS

POLICY/ PROGRAM IMPACT

Policy or Program Change	<input type="checkbox"/> No <input type="checkbox"/> Yes
Operational Impact Assessment	

(This space for further discussion)

Project Start

Date 15 June 1992

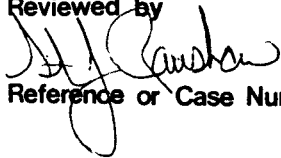
Projected Completion or Occupancy

Date 26 August 1992

Fact Sheet Prepared by

Patricia Biancaniello

Reviewed by



Date 26 August 1992

Date

26 AUGUST 1992

Reference or Case Number

- a. Bill No. Z-92-07-03 - Change of Zone #514
From POD to B-1-A
4704 E State Bl

Yvonne Stam made a matter of record five (5) letters that had been sent to the Commission in opposition to the proposed rezoning.

Janice Garman, stated that she was the potential buyer for 4704 E State Blvd., now owned by Patrick Bruggeman. She stated that the only reason that she was before the Commission asking for a B1A classification, rather than using the POD designation and approval of the Board of Zoning Appeals, is that she has to be able to allow the hairdressers that work in the salon to sell their own beauty aids to their clients. She stated that using the POD with a stipulation of no retail sales, would not allow her, or the hairdressers that will work in the salon, to run the business in the fashion it was meant to be run. She stated that everyone that will work in the salon would be self employed. She stated that they do all of their own books, pay all of their own taxes, buy all of their own supplies and make all of their own appointments. She stated that in essence it is eight (8) small businesses within the business. She handed out to the Commission a booklet of exhibits. Exhibit A was a letter written by Scott Cassingham, to Pete Mallers, attorney for Patrick Bruggeman, which states that on May 28, 1992 that the Board of Zoning Appeals agreed that Beauty Salons and their operators are now considered professional. She stated that it also states that they are considered a permitted use in a professional office district, as long as they do not have any retail sales. She stated that in no way could she tell these private and professional business owners that they can not fully service there own clientele with beauty aids. She stated it would be like an optician telling their clients they could examine their eyes but not sell them glasses or contacts, or an audiologist who could examine ones hearing, but not sell them a hearing aid. She stated that the majority of hair salons have 20 feet of store front selling nothing but beauty supplies. She stated that this one will not have that kind of sales. She noted that in Exhibit B it showed that a scale layout of the building showed that each operator would have only a 15" x 16" space on the left side of their own space for retail sales items. She stated that no other space in the building would be used for retail. That space would be taken up by seating for clients or the equipment used in the salon. She noted that in Exhibit C is a copy of the statement from the Central States Beauty Supply when she picked out the equipment. She stated that no where on the supply list shows any retail shelving. She noted that Exhibit D was a copy of her profit and loss statement that was given to Grabill bank. She stated that it shows that this salon will not have any amount of retail income. Ms. Garman showed the Commission a picture of the site indicating the structure she was interested in purchasing set backs quite a distance from the road. She stated that the building was hidden by trees and bushes and looks like a residence. She stated that with no large sign, anyone not connected with the salon would not no that it was there. She noted that Exhibit E is the layout of the park. She stated that

there is a proposed building in front of the one she wants to purchase. She stated that this salon could in no way be a typical drive by beauty salon. She stated that she has received support from the surrounding property owners in East State Professional Park. She stated that the majority of owners have signed an acceptance form on her behalf. She stated that these forms are noted as Exhibits F & G. She stated that Exhibit H is a letter from the surrounding property owners to the Commission. She stated that they have noted in the letter that if the property is rezoned they would amend the restrictive covenants to allow her to buy the property and to run her business in the fashion it was meant to be. She stated that in the original petition they asked for only $\frac{1}{4}$ of an acre to be rezoned. She stated now it is a full acre. She stated that she does not plan on buying the full acre she only needs the $\frac{1}{4}$ acre. She stated that the only way she could reapply was to make a substantial difference in the petition. She stated that the petitioners are not trying to "put anything over" on the Commission with the petition. She stated that they are willing to limit the use of the property, after it is rezoned, to a beauty salon, an optician or an optometrists office. She stated that one of the reasons she was given for the denial of the first rezoning request was that the rezoning would bring down property values. She stated that in Exhibit H it states, "We support the petition to rezone a B1A for 4704 E State Blvd., because we feel that the proposed use will complement the existing uses within this office park and will in no way have a negative impact on our property values or on the professional atmosphere of this office." She stated that the people who wrote the letter were the ones who had the most to lose by the granting of the rezoning to B1A. She noted that Exhibit I is an area map of this property and the surrounding area. She stated that on the southeast corner of the map is a B1A zoning. She noted that there is a beauty salon by the name of Great Lengths Hair and Nail Artistry advertising that they are located in East State Professional Park. She noted that their unit is zoned B-1-A, that this rezoning has already set a precedent in the park. She questioned what the difference was between a unit of a building or a whole building being rezoned. She stated that Great Lengths has been in this location for over six years and in that six years there been no proof that the salon and its retail has brought down the integrity or the property value. She questioned why they could not rezone the property and contract it to a special use. She wanted to know why she could not have a "paper" stating, that if this B1A property could not be sold as a beauty salon, that it would revert back to a POD classification.

Robert Hutner stated that we do have quite a precedent both from Board of Zoning Appeals and from the Plan Commission against spot zoning. Mr. Hutner questioned what becomes of the ruling of the Board of Zoning Appeals if this rezoning were to be approved. The Board of Zoning Appeals has made a judgement that no retail sales be allowed.

David Wright stated that he felt she still had the authority to file for change of zoning.

Steve Ranshaw stated that the request that went before the Board of Zoning Appeals was an interpretation of the Ordinance. The question being is a beauty salon permitted in any POD. He stated that was an all encompassing interpretation, so now that will effect other POD's and other beauty salons, it was not necessarily site specific to this POD. They are asking now to rezone it to a district that would permit retail sales, because they could not work within the condition that the Board of Zoning Appeals placed on it.

Yvonne Stam questioned Commission counsel to explain why it is not possible to rezone with a contract for a specific use.

David Wright stated that your are trying to make a contract with the Plan Commission for a change of zoning and it is contrary to law.

John Shoaff questioned if everyone in the professional park signed the petition in support of this rezoning.

The petitioner stated 5 of the 7 owners signed the petition.

John Shoaff questioned if Exhibits B C & D, relating to the retail sales, if they were presented to the Board of Zoning Appeals at the time of the request to them.

Ms. Garman stated that they were not submitted at the Board hearing.

Don Schmidt stated that since the BZA has classified them as a professional, and that is the same designation that is given to optometrists, and optometrists are allowed to sell glasses and ancillary supplies to their customers, he could not see any reason why a beauty operator, since they are rated as professional, would not be allowed to do exactly the same thing. He stated that he did not understand the BZA not permitting this limited type of retail since they do permit it for optometrists. He stated that he felt an appeal should go back to the BZA, because he felt they had given her a wrong ruling. Don Schmidt said he questioned why the petitioner could not be permitted to have that limited retail sales to a customer, but an optometrists can sell the glasses to someone who has had an examination. He stated that he did not see the difference.

Mr. Wright stated that there may not be. He stated it was the restriction placed by the BZA on her request as far as permitting beauty salons in POD's. He stated that they have a right to place reasonable conditions. He stated that he did not know if she could appeal back to the BZA, but perhaps she should appeal to the Circuit Court on a Writ of Certiorari.

Don Schmidt asked the petitioner is she had taken it back to the BZA or beyond.

Ms. Garman stated she was informed by the staff that the next step would be to come here.

Steve Ranshaw stated that when Ms. Garman came into the office that staff gave her a list of options that could be followed. One was coming before the Plan Commission with a significantly modified request, which is what she chose to do, or go back to the Board of Zoning Appeals for a Use Variance, or to find a new location with the appropriate zoning.

Robert Wright stated that he shared the belief that this should certainly be included with other professionals. He questioned if she had a contract with Mr. Bruggeman, the current property owner.

Ms. Garman stated that she has an option to buy if it is zoned so that she can have retail sales in her salon.

Robert Wright stated that his reservation is that she was requesting a zoning that would allow for a much more extended use. He stated that he would be more comfortable with approving some exception to the rule or a variance.

Greg Purcell, Executive Director of Community & Economic Development, stated that this went before the Plan Commission and before City Council back in April for a zoning to B1A for a smaller parcel and was denied by both the Commission and Council. He stated that they went to the Board of Zoning Appeals, not with a variance request, but their attorney advised them to go with an interpretation issue before the Board of Zoning Appeals. He stated that interpretation issue was, "is a beauty salon a profession?" under the professional office district category. The BZA made a determination, and it was the staff's recommendation on that determination that you could make a determination that they were professional, but that retail sales would be inappropriate. From a very practical, down to earth standard, from the staff's perspective, we have to enforce these ordinances that are adopted by the City Council, Plan Commission and Board of Zoning Appeals. He stated that this was not for a variance. A variance would have been a different matter for this individual case and would have been case specific. When you talk about the interpretation, that encompasses everything. When do you stop having an encroachment of retail sales in a professional office district? And when is getting a prescription from a doctor as you are leaving the office the same as going to a retail pharmacy, which is dealing with retail products? He stated that you place the staff in a very, very difficult kind of position when you try to do that type of interpretation. He stated for those sorts of reasons, retail was determined to be not the primary concern here. And when is a business really retail, and when is it really professional? How many shampoos, clothing items, necklaces, jewelry and that sort of thing, and at what point do you want us to go in and say you have crossed the boundary line, "You are no longer a beauty salon, you are a retail sales outfit." And are we going to have staff out there spending an inordinate amount of time trying to grapple with

these sorts of things? If you want to allow this request, and this is a very persistent request, he would counsel them that rezoning is not the appropriate method of dealing with the case. He stated that he would suggest they table the matter and put in a request for a variance to go before the Board. Hear the merits of the individual variance, and make a determination on that case, and not open the door for universal interpretation. He stated that if it is the inclination of the Commission he would suggest tabling the matter, suggesting filing for a specific variance, specific to this site for the beauty salon, with any conditions the BZA wants imposed upon it. He stated not the wholesale rezoning, it would open up a lot of retail that would be inappropriate with the planned office district.

Steve Smith stated that clearly the POD ordinance does not permit retail sales, and that is not interpretive. Whether you classify beauticians as professionals consistent with optometrists who dispense contact lenses, glasses, frames and supplies, that may be an enforcement problem that were not enforcing the ordinances that we already have on the books. He stated that if it does go back to the BZA for a variance he would counsel the members of the BZA to consider the aspect that they did the right thing in the first place, by being consistent with the ordinance, by not permitting retail sales. Mr. Smith stated that this is a comment in regards to a question raised by the petitioner, contract zoning is clearly against the law in the state of Indiana and we cannot make zoning based on a deal where you promise to this or that. The zoning does run with the land, until it is changed. He stated that the representation of the case is weighty and meaningful, but still we look at the precedent, and once that is rezoned we have no control over the property.

Bob Hutner made a motion to table the request and refer it back to the BZA.

Steve Smith noted that as a point of order that this was a public hearing and a motion was out of order.

Don Schmidt stated that he would like to respond to a comment that Mr. Smith made regarding a doctor, or a lawyer or an optometrist being a different type of professional than a beauty operator. He stated that he would not argue with that, with the exception of how the word is used in this particular ordinance. He stated that the letter that they have a copy of from Mr. Cassingham, who is the interpreter of the ordinances that pertain to this, made the comment under Item 1, that beauty salons and operators are professionals for the purpose of this section. He stated that makes them equal to all the other professionals that you named that are already doing a limited type of retail. He stated that he felt she has a very clear case of being able to do exactly what this particular statement says, because the others are permitted to do that. And to say that we are now going to say that optometrist can not sell glasses, I don't think that is a reasonable thing to bring up.

John Shoaff stated he assumed the rules against retailing have a practical intent. He stated that he assumed the intent is that they are trying to limit traffic, they are trying to limit the need for large parking lots, advertising signs, etc. He stated it seems to him there has been a clear demonstration here that the kind of retail sales that go on here do not create those kinds of traffic or parking or advertising sign needs. He stated that it seemed to him they would fall within the kind of activity that an optometrist falls within. He questioned Mr. Purcell if there were grounds for an appropriate and practical variance request.

Mr. Purcell stated that the difficulty that she will have to demonstrate is that there is a hardship. He stated that the hardship cannot be involved with her particular business or incidence, it has to be a hardship related to the property. He stated she will have to make the case and the Board will have to find that there is some hardship. He stated it will be somewhat of a difficult case to make. He stated that the Board did say she is a professional. She can go out and start the business today, she just cannot have any retail sales.

Don Schmidt questioned Mr. Purcell if he was saying that she was less professional than someone else, because you permit other people to have retail sales.

Wayne O'Brien, Planner II with CED, stated that he did not want to speak for the Board of Zoning Appeals, because he didn't know that anyone on the staff level was sufficiently knowledgeable about their entire motivation for the action they took. He stated that his understanding of the interpretation of that action is their finding was that a beauty salon operation, to the extent that it did not include retail sales, was a professional operation for the terms of this ordinance. At the point where a beauty salon included retail sales it was no longer considered to be a professional operation. He stated he thought that distinction may eliminate some of the cloudiness that is in the air.

There was no one else present who spoke in favor of or in opposition to the proposed rezoning.

#514
ORIGINAL

ORIGINAL

DIGEST SHEET

TITLE OF ORDINANCE Zoning Map Amendment

DEPARTMENT REQUESTING ORDINANCE Land Use Management - C&ED

SYNOPSIS OF ORDINANCE 4704 E State Bl

2-92-07-03

EFFECT OF PASSAGE Property is currently zoned P.O.D. -

Professional Office District. Property will become B-1-A -

Limited Business District.

EFFECT OF NON-PASSAGE Property will remain a P.O.D. -

Professional Office District.

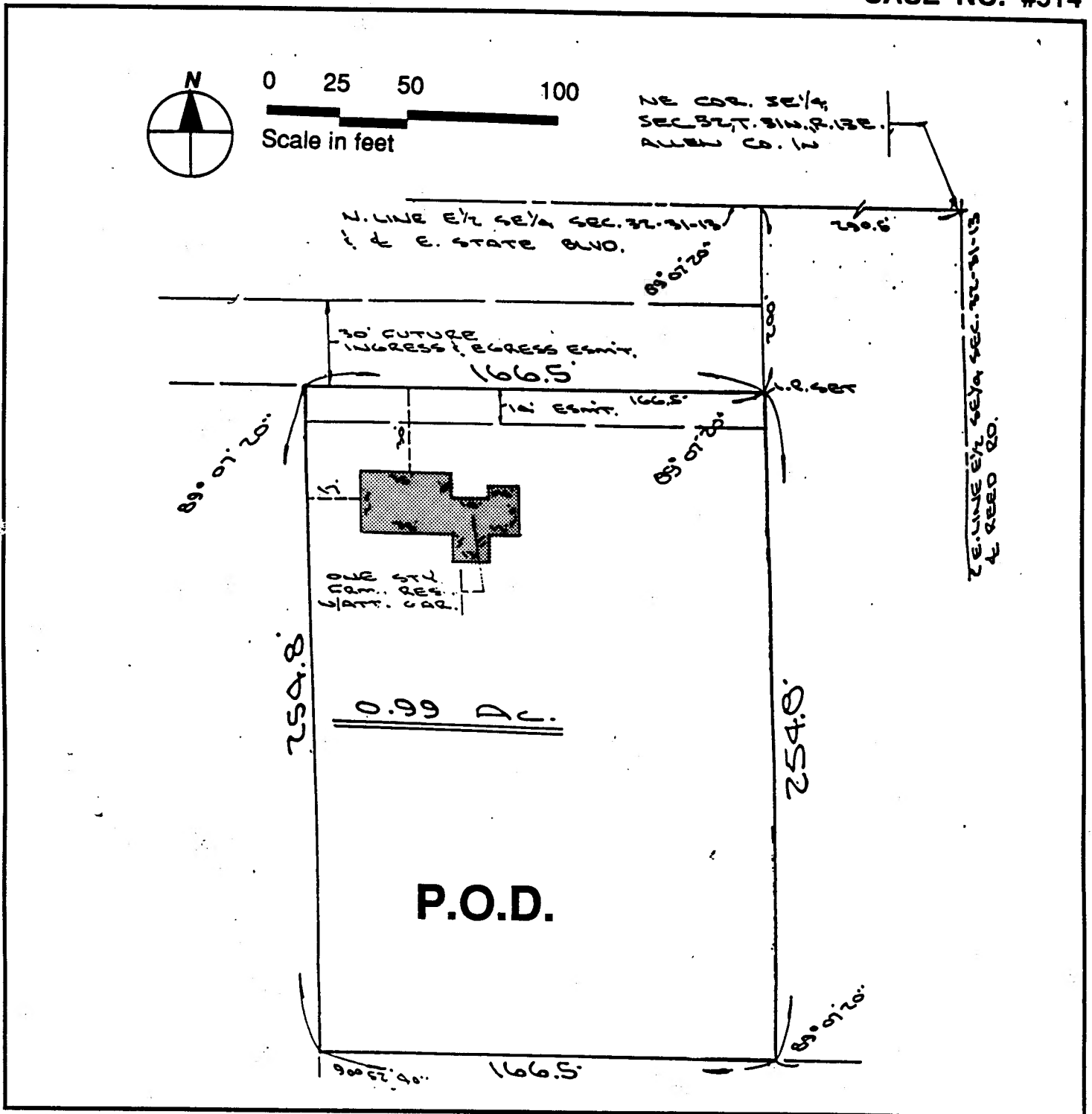
MONEY INVOLVED (Direct Costs, Expenditures, Savings) _____

(ASSIGN TO COMMITTEE) _____

REZONING PETITION

AREA MAP

CASE NO. #514



COUNCILMANIC DISTRICT NO. 2

Map No. S-14
LW 6-22-92

R1	One-Family	B1	Limited Business	M1	Light Industrial
R2	Two-Family	B2	Planned Shopping Center	M2	General Industrial
R3	Multi-Family	B3	General Business	M3	Heavy Industrial
RA/RB	Residential	B4	Roadside Business	MHP	Mobile Home Park
PUD	Planned Unit Dev.	POD	Professional Office District		

BILL NO. Z-92-07-03

Held

REPORT OF THE COMMITTEE ON
THE COMMITTEE OF THE WHOLE

DONALD J. SCHMIDT, CHAIR
CLETUS R. EDMONDS, VICE CHAIR
ALL COUNCIL MEMBERS

WE, YOUR COMMITTEE ON THE COMMITTEE OF THE WHOLE TO WHOM WAS
REFERRED AN (ORDINANCE) (~~RESOLUTION~~) amending the City of
Fort Wayne Zoning Map No. S-14

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) (~~RESOLUTION~~)

<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>	<u>NO REC</u>
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DATED:

Sandra E. Kennedy
City Clerk